

## **R E M A R K S**

Careful review and examination of the subject application are noted and appreciated.

### **SUPPORT FOR THE CLAIM AMENDMENTS**

Support for the claim amendments may be found in the specification, for example, on page 7 lines 1-17 and FIGS. 5, as originally filed, and claims 12 and 19, as previously presented. Thus, no new matter has been added.

### **CLAIM REJECTIONS UNDER 35 U.S.C. §103**

The rejection of claims 1-7, 9-16, 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over Brown '493 in view of Bondy '139, Papageorge '445, Cairnes '404, Chapman, US Pub. No. 2005/0108067, "Industrial Application of Safety Information Management Systems" by Yoon and Official Notice 1 has been obviated in part by appropriate amendment, is respectfully traversed in part, and should be withdrawn.

The rejection of claims 8 and 17 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Bondy, Papageorge, Cairnes, Mayer et al., U.S. Patent Pub. No. 2002/0010597 (hereafter Mayer) and Official Notice 2 is respectfully traversed and should be withdrawn.

The rejection of claim 20 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Cairnes is respectfully traversed and should be withdrawn.

The rejection of claims 21 and 22 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Papageorge, Bondy Cairnes, Official Notice 3 and Official Notice 4 is respectfully traversed and should be withdrawn.

Brown concerns a monitoring system for remotely querying individuals (Title). Bondy concerns a method and apparatus for transforming a resource planning data structure into a scheduling data structure (Title). Mayer concerns systems and method for electronic health management (Title). Papageorge concerns a medical system for shared patient and physician decision making (Title). Cairnes concerns a method and apparatus for an integrated clinical tele-informatics system (Title). Chapman concerns a method of increasing efficiency in a medical claim transaction and computer program capable of executing same (Title). Yoon concerns industrial applications of safety information management systems (Title). Official Notice 1 is taken that icons are well known in the software industry. Official Notice 2 is taken that medical claims comprise data relating to the physical condition of an individual. Official Notice 3 is taken that it is well known in the software industry to register a language of an individual and tailor subsequent programs to the individual in dependence upon

their language. Official Notice 4 is taken that it is well known in the software industry to simulate (debug) questionnaires prior to transmission to patients.

Claims 1 and 10 are independently patentable over the cited references. Claim 1 provides a questionnaire generator for (i) generating a questionnaire comprising (a) one or more questions for determining an expression of risk for an individual, (b) a first number of answer options to each of the questions and (c) one or more follow-up actions. Claim 10 provides similar language. In contrast, the Office Action (i) rejects old claim language that no longer applies to the pending claims and (ii) does not establish a *prima facie* case of obviousness.

The language cited in the Office Action for the rejection of claim 1 is different than as claimed. For example, claim 1 does **NOT** provide "a questionnaire generator for (i) generating a questionnaire comprising (a) one or more questions for determining at least one of a physical condition of said individual, a mental condition of said individual, and a behavior of said individual...." In contrast, no arguments are presented against the actual claim language. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Furthermore, the Office Action states that Brown does not teach (i)(b) a first number of answer options for an individual.

The Office Action alleges that the text in column 8 lines 44-47, column 8 lines 58-63, column 8 lines 65-67 and column 9 lines 6-17 of Papageorge teach the claimed first number of answer options. The text of Papageorge column 8 line 44-column 9 line 17 reads:

- g. Ask experts to reconcile practice views with published outcomes statistics to assess effect of practice patterns on treatment selection.

- h. Conduct cost-effectiveness analysis to compare costs of each treatment to survival, continued morbidity, and mortality.

### 3. System Components

- a. Use cost and outcome data, from the steps above, to indicate trade-offs for patients to consider in selecting, with their physicians, a suitable treatment.

- b. Quantify these trade-offs using discount rates to score patients' risk tolerance for each treatment strategy, showing the proximity of treatment preferences to what is most cost-effective.

- c. Develop patient questionnaire to elicit treatment preferences and their bases, e.g., economic, family, lifestyle, and fear of surgical risk, pain, etc., which may change his/her risk tolerance level.

- d. Develop physician questionnaire on patients' clinical condition, severity level, planned treatment, and why others are not appropriate for a given patient.

- e. Apply risk tolerance scale to the reasons for preferences to construct a risk tolerance profile of the patient.

- f. Use cost-effectiveness analysis results to compute estimated direct medical cost of treatment and indirect costs resulting from inability to work or perform other tasks measurable by the concept of human capital.

- g. Write conditional text for each possible physician and patient questionnaire response, explaining its positive or negative impact on outcome.

- h. Format a report showing the responses and conditional text, the patient's risk tolerance profile, patient and physician treatment preferences, how they compare to that found to be most cost-effective, and the factors supporting their choice. Compute direct and indirect costs of each treatment option. Also, show the patient's severity level based on aggregate scores of the clinical indicators. Provide a one-page summary of the same information for use by insurers.

In contrast, nowhere in the above text or in any other section does Papageorge appear to discuss a first number of answer options for an individual, as presently claimed. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 1 further provides that the questionnaire generator (ii) associates each of the answer options with one of a second number of values representing a level of risk, the second number of values being greater than the first number of answer options. Claim 10 provides similar language. In contrast, Yoon does not appear to discuss any relationship between a number of available answer options and a larger risk scale.

In particular, page 3 of Yoon appears to discuss normalizing many survey answers into a 0-100% scale. The survey answers appear to be gathered **after** the questionnaires have been presented to the individuals. The survey results appear to be a mathematical averaging of **all** answers. However, the claim language (i) associates the answer options to the risk scale **before** transmission and (ii) the associations are applied to **individual** answer options, not a collection of actual answers. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 1 further provides a database in a storage medium, the database containing model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk. Claim 10 provides similar language. The Office Action asserts that Brown, Bondy and Papageorge do not teach a database related to an aspect of care, an expression of risk and a level of risk. The Office Action alleges that an aspect of care, an expression of risk and a level of risk of a database is taught by column 21 lines 12-27 of Cairnes, which reads:

In step 1208, PHA 120 retrieves the patient's 108 interview responses and medical device readings and stores the data in a database 130. The PHA decision support 126 and event manager 128 software, in step 1210, automatically processes the responses and device data, and in step 1212, classifies the pregnancy within a risk continuum based upon the available information and clinical management rules. In a preferred embodiment, the risk continuum is divided into at least three risk classifications of normal, medium or high risk. The software recommends for patient 108 a specific set of therapies based upon the patient's classification in the risk continuum. Generally, the number of recommended therapies is directly proportional to a patient's classification in the risk continuum. Thus, high risk patients receive significantly more therapies in contrast to low risk patients.

In contrast, the cited text mentions a risk continuum divided into classifications of normal, medium and high risk. However, the above text and the rest of Cairnes appears to be silent regarding both an aspect of care and an expression of risk. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 1 further provides a profile generator for (i) generating a profile for the individual based on one or more of the aspects of care, responses to the questions, the expression of risk and the level of risk associated with the individual. Claim 10 provides similar language. The Office Action asserts that Brown does not teach the claimed profile generator. The Office Action also asserts that Papageorge mentions a profile generator in column 8 lines 44-47, column 8 lined 58-63, column 8 lines 65-67 and column 9 lines 6-17, which have been reproduced above. In contrast, the cited text does mention constructing a risk tolerance profile. However, the cited text and the rest of Papageorge appears to be silent regarding the risk tolerance profile being based on one or more of the aspects of care, the responses to the questions, the expression of risk and the level of risk associated with the individual. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 1 further provides that the profile generator (ii) sends health related information to the individual **based on the profile**. Claim 10 provides similar language. The Office Action asserts that Brown, Papageorge and Bondy do not teach the claimed profile generator. The Office Action also asserts that paragraph 0046 of Chapman mentions the above claim limitation:

[0046] As an example, steps 230, 240, and 250 can be used to automatically detect in real time many problems associated

with medical service providers who submit overlapping medical claims containing duplicative medical procedure codes. For example, assume that a surgeon has previously submitted a medical claim for an entire surgical plan, including pre-operation and post-operation procedures. The computer system performing methods 100 and 200 will detect if the surgeon submits a new medical claim for the same patient for a single post-operation procedure already covered by the previous medical claim. This type of duplicate medical claims submission is a common error correctable by using methods 100 and 200.

In contrast, Chapman appears to be silent that the information is sent by a profile generator to an individual based on the profile of the individual. The cited text of Chapman appears to be limited to a surgeon submitting a duplicate medical claim to a claims processor. Nothing in the cited text appears to mention a profile generator sending the information. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 1 further provides that data relating to the physical condition of the individual comprises patient information from one or more medical claims received by the server from a medical claims paying organization associated with the individual. Claim 10 provides similar language. The Office Action asserts that Brown, Papageorge and Bondy do not teach electronic medical claims. The Office Action further asserts that paragraph 0046 of Chapman discusses medical claims received by a server from a medical claims paying organization. In contrast, Chapman appears to be silent that the data is sent from a medical claims paying organization to



a server. The cited text of Chapman appears to be limited to a surgeon submitting a medical claim to a claims processor. Nothing in the cited text appears to mention the claims processor sending the claim data to a server. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed. As such, claims 1 and 10 are fully patentable over the cited references and the rejections should be withdrawn.

Claim 19 is independently patentable over the cited references. Claim 19 provides (A) displaying a plurality of icons of a plurality of questions, a plurality of answers, a plurality of follow-up actions and a plurality of follow-up answers. The Office Action cites FIG. 5 and the text in column 5 lines 52-62 of Brown, which read:

The script generator is designed to create a script program from the information entered in the script entry screen. The script program is executed by one or more of the remote apparatuses, as will be described in detail below. In the preferred embodiment, the script program includes display commands to display the queries and corresponding response choices entered in fields 94 and 96, respectively. The script program also includes input commands to receive responses to the queries. The script program further includes a collect command to collect device measurements from the monitoring device specified in check boxes 98.

The cited material of Brown does not appear to mention icons. The above text does mention fields 94 and fields 96 in which queries and response choices are entered by the user. One of ordinary skill in the art would not appear to consider fields for entering

data to be similar to icons. Furthermore, even if icons were well known in the art (Official Notice 1), no explanation is provided in the Office Action to explain how the blank fields of Brown are filled using icons. The proposed combination of Brown and Official Notice 1 does not appear to be functional. Therefore, *prima facie* obviousness has not been established.

Furthermore, claim 19 provides icons of follow-up actions and follow-up answers. However, the cited material of Brown does not appear to mention follow-up actions or follow-up answers. Therefore, *prima facie* obviousness has not been established.

Claim 19 further provides (B) receiving a selection to each of a particular question of the questions, a particular answer of the answers, a particular follow-up action of the follow-up actions and a particular follow-up answer of the follow-up answers from a user. The Office Action cites FIG. 5 and the text in column 5 lines 52-62 of Brown (reproduced above) in the rejection. However, the cited material of Brown does not appear to mention a user selecting question, answer, follow-up action and follow-up answer icons. Therefore, *prima facie* obviousness has not been established.

Claim 19 further provides (C) linking the particular icons. The Office Action cites FIG. 5 and the text in column 5 lines 52-62 of Brown. The cited material of Brown does not appear to mention linking icons. Therefore, *prima facie* obviousness has

not been established. As such, claim 19 is fully patentable over the cited references and the rejection should be withdrawn.

Claims 3, 12 and 21 are independently patentable over the cited references. Claim 3 provide that a profile comprises a language of an individual. The Office Action cites the text in column 4 lines 59-60 of Brown (in rejecting claims 3 and 12), which reads:

Each patient to be monitored is preferably associated with a respective one of the remote apparatuses.

The above text does not appear to mention a language in a profile.

Furthermore, Official Notice 3 (in rejecting claim 21) does not appear to address registering the language in a profile of the individual. Therefore, *prima facie* obviousness has not been established and the rejections should be withdrawn.

Furthermore, Official Notice 3 and Official Notice 4 are respectfully traversed. The Office is requested to provide evidence that software programs in March 2001 or before (i) were tailored to a specific language of the user **before** sending the program to the user and (ii) questionnaire programs generated by linking **known** questions to **known** answers, follow-up actions and follow-up answers were debugged prior to transmission to a patient.

Claim 15 is independently patentable over the cited references. Claim 15 further provides generating a report comprising the profile. In contrast, the Office Action does not provide any evidence or arguments that any of Brown, Bondy,

Papageorge, Cairnes, Chapman and/or Yoon render obvious the claimed report. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claim 20 is independently patentable over the cited references. Claim 20 further provides defining a position of the particular answer along a risk scale ranging from a low risk value to a high risk value. The Office Action cites column 21 lines 21-27 of Cairnes in the rejection, which has been reproduced above. The cited text of Cairnes appears to mention a risk continuum having a range from normal to high. However, the cited text and the rest of Cairnes appears to be silent regarding defining a position of a particular answer along the risk continuum. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references render obvious all of the limitations as claimed.

Claims 2-9, 11-18 and 20-22 depend, either directly or indirectly, from claims 1, 10 or 19, which are now believed to be allowable. As such, the dependent claims are fully patentable over the cited references and the rejections should be withdrawn.

#### **COMPLETENESS OF THE OFFICE ACTION**

Aside from a notice of allowance, Applicant's representative respectfully requests any further action on the

merits be presented as a non-final action. No arguments were presented to explain the rejection of claim 15 as required by 37 CFR §1.104(b). Contrary to the assertion in the Office Action, the rejections of claims 1-9 do not provide "the same basis" to reject the generation of a report in claim 15.

Regarding claims 8, 17 and 20-22, all of the independent claims are rejected under the combination of Brown in view of Bondy, Papageorge, Cairnes, Chapman, Yoon and Official Notice 1. However, the rejections of the above dependent claims use less than all of the references cited against independent claims 1, 10 and 19. Therefore, the grounds of rejection for claims 8, 17 and 20-22 are incorrect and should be withdrawn.

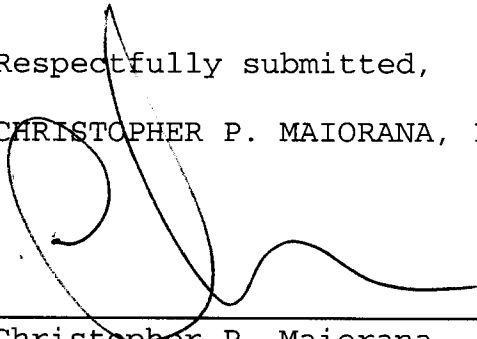
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit  
Account No. 50-0541.

Respectfully submitted,

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c/o Sandeep Jaggi  
Health Hero Network

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